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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

MICHELLE ABBASZADEH, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

ALL WEB LEADS, INC., a Texas corporation,

Defendant.

Case No. 5:20-cv-684

CLASS ACTION

**COMPLAINT FOR VIOLATIONS OF
THE TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. §§ 227,
ET SEQ. (TCPA)**

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1. Plaintiff Michelle Abbaszadeh brings this action against Defendant All Web Leads, Inc., to secure redress for violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

NATURE OF THE ACTION

2. This is a putative class action pursuant to the Telephone Consumer Protection Act, 47 U.S.C. §§ 227, *et seq.* (the “TCPA”).

3. To gain an advantage over its competitors and increase its revenue, Defendant engages in unsolicited telemarketing, with no regard for consumers’ privacy rights.

4. Defendant is a marketing agency based in Austin, Texas. To promote its services, Defendant engages in aggressive unsolicited marketing, harming thousands of consumers in the process.

5. Defendant has been previously sued before for violating the TCPA and was aware of the restrictions imposed upon it by the TCPA.

6. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s illegal conduct, which has resulted in the invasion of privacy, harassment, aggravation, and disruption of the daily life of thousands of individuals. Plaintiff also seeks statutory damages on behalf of herself and members of the Class, and any other available legal or equitable remedies.

JURISDICTION AND VENUE

7. This Court has federal question subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §§ 227, *et seq.* (“TCPA”). Jurisdiction is also proper under 28 U.S.C. § 1332(d)(2) because Plaintiff alleges a national class, which will result in at least one class member belonging to a different state than that of Defendant. Plaintiff seeks up to \$1,500.00 (one-thousand-five-hundred dollars) in damages for each call in violation of the TCPA, which, when aggregated among a proposed class numbering in the tens of thousands, or more, exceeds the \$5,000,000.00 (five-million dollars) threshold for federal court jurisdiction under the Class Action Fairness Act

1 (“CAFA”). Therefore, both the elements of diversity jurisdiction and CAFA jurisdiction are
2 present.

3 8. The Court has personal jurisdiction over Defendant because Defendant directs,
4 markets, and provides its business activities to this District, and because Defendant’s unauthorized
5 marketing scheme was directed by Defendant to consumers in this District, including Plaintiff.
6 Furthermore, the exercise of personal jurisdiction over the Defendant in this District does not
7 offend traditional notions of fair play or substantial justice.
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9 9. Venue is proper in the United States District Court for the Northern District of
10 California pursuant to 28 U.S.C. § 1391(b) and (c) because Defendant is deemed to reside in any
11 judicial district in which it is subject to the court’s personal jurisdiction, and because Defendant
12 provides and markets its services within this district thereby establishing sufficient contacts to
13 subject it to personal jurisdiction. Further, Defendant’s tortious conduct against Plaintiff occurred
14 within the State of California and, upon information and belief, Defendant has sent the same
15 prerecorded messages complained of by Plaintiff to other individuals within this judicial district,
16 such that some of Defendant’s acts in making such calls have occurred within this district,
17 subjecting Defendant to jurisdiction in the State of California.
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19 **PARTIES**

20 10. Plaintiff is a natural person who, at all times relevant to this action, was a resident
21 of Santa Clara County, California.
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23 11. Defendant is a Texas corporation whose principal office is located at 7300 Ranch
24 Road 2222 Bldg 2 Ste 100 Austin, TX 78730-3233. Defendant directs, markets, and provides its
25 business activities throughout the United States, including throughout the state of California.
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12. Unless otherwise indicated, the use of Defendant's name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, vendors, and insurers of Defendant.

THE TCPA

13. The TCPA prohibits: (1) any person from calling a cellular telephone number; (2) using an automatic telephone dialing system; (3) without the recipient's prior express consent. 47 U.S.C. § 227(b)(1)(A).

14. The TCPA defines an "automatic telephone dialing system" ("ATDS") as "equipment that has the capacity - (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." 47 U.S.C. § 227(a)(1).

15. The TCPA exists to prevent communications like the ones described within this Complaint. "Voluminous consumer complaints about abuses of telephone technology—for example, computerized calls dispatched to private homes—prompted Congress to pass the TCPA." *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

16. In an action under the TCPA, a plaintiff must only show that the defendant "called a number assigned to a cellular telephone service using an automatic dialing system or prerecorded voice." *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d 1316, 1319 (S.D. Fla. 2012), *aff'd*, 755 F.3d 1265 (11th Cir. 2014).

17. The Federal Communications Commission ("FCC") is empowered to issue rules and regulations implementing the TCPA. According to the FCC's findings, calls in violation of the TCPA are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for

1 incoming calls whether they pay in advance or after the minutes are used. *Rules and Regulations*
2 *Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report
3 and Order, 18 FCC Rcd 14014 (2003).

4 18. In 2012, the FCC issued an order tightening the restrictions for automated
5 telemarketing calls, requiring “prior express *written* consent” for such calls to wireless numbers.
6 *See In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27
7 F.C.C.R. 1830, 1838 ¶ 20 (Feb. 15, 2012) (emphasis supplied).

8 19. To obtain express written consent for telemarketing calls, a defendant must
9 establish that it secured the plaintiff’s signature in a form that gives the plaintiff a “‘clear and
10 conspicuous disclosure’ of the consequences of providing the requested consent....and having
11 received this information, agrees unambiguously to receive such calls at a telephone number the
12 [plaintiff] designates.” *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of*
13 *1991*, 27 F.C.C.R. 1830, 1837 ¶ 18, 1838 ¶ 20, 1844 ¶ 33, 1857 ¶ 66, 1858 ¶ 71 (F.C.C. Feb. 15,
14 2012).

15 20. The TCPA regulations promulgated by the FCC define “telemarketing” as “the
16 initiation of a telephone call or message for the purpose of encouraging the purchase or rental of,
17 or investment in, property, goods, or services.” 47 C.F.R. § 64.1200(f)(12). In determining
18 whether a communication constitutes telemarketing, a court must evaluate the ultimate purpose of
19 the communication. *See Golan v. Veritas Entm’t, LLC*, 788 F.3d 814, 820 (8th Cir. 2015).

20 21. “Neither the TCPA nor its implementing regulations ‘require an explicit mention
21 of a good, product, or service’ where the implication of an improper purpose is ‘clear from the
22 context.’” *Id.* (citing *Chesbro v. Best Buy Stores, L.P.*, 705 F.3d 913, 918 (9th Cir. 2012)).
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1 22. “‘Telemarketing’ occurs when the context of a call indicates that it was initiated
2 and transmitted to a person for the purpose of promoting property, goods, or services.” *Golan*,
3 788 F.3d at 820 (citing 47 C.F.R. § 64.1200(a)(2)(iii); 47 C.F.R. § 64.1200(f)(12); *In re Rules and*
4 *Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 F.C.C. Rcd at
5 14098 ¶ 141, 2003 WL 21517853, at *49).

6 23. The FCC has explained that calls motivated in part by the intent to sell property,
7 goods, or services are considered telemarketing under the TCPA. *See In re Rules and Regulations*
8 *Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd. 14014, ¶¶ 139-142
9 (2003). This is true whether call recipients are encouraged to purchase, rent, or invest in property,
10 goods, or services during the call *or in the future. Id.*

11 24. In other words, offers “that are part of an overall marketing campaign to sell
12 property, goods, or services constitute” telemarketing under the TCPA. *See In re Rules and*
13 *Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd. 14014,
14 ¶ 136 (2003).

15 25. If a call is not deemed telemarketing, a defendant must nevertheless demonstrate
16 that it obtained the plaintiff’s prior express consent. *See In the Matter of Rules and Regulations*
17 *Implementing the Tel. Consumer Prot. Act of 1991*, 30 FCC Rcd. 7961, 7991-92 (2015) (requiring
18 express consent “for non-telemarketing and non-advertising calls”).

19 26. As recently held by the United States Court of Appeals for the Ninth Circuit:
20 “Unsolicited telemarketing phone calls or text messages, by their nature, invade the privacy and
21 disturb the solitude of their recipients. A plaintiff alleging a violation under the TCPA ‘need not
22 allege any *additional* harm beyond the one Congress has identified.’” *Van Patten v. Vertical*
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1 *Fitness Grp.*, No. 14-55980, 2017 U.S. App. LEXIS 1591, at *12 (9th Cir. May 4, 2016) (quoting
2 *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016) (emphasis original)).

3 **FACTUAL ALLEGATIONS**

4 27. Within the last four years, Defendant has caused numerous calls with prerecorded
5 messages to be transmitted to Plaintiff's cellular telephone ending in 8532 (the "8532 Number"),
6 including on or about November 13, 2019 and November 14, 2019.

7 28. The prerecorded calls at issue were transmitted to Plaintiff's cellular telephone, and
8 within the time frame relevant to this action.

9 29. When Plaintiff listened to Defendant's message she was easily able to determine
10 that it was a prerecorded message. *Rahn v. Bank of Am.*, No. 1:15-CV-4485-ODE-JSA, 2016 U.S.
11 Dist. LEXIS 186171, at *10-11 (N.D. Ga. June 23, 2016) ("When one receives a call, it is a clear-
12 cut fact, easily discernible to any lay person, whether or not the recipient is speaking to a live
13 human being, or is instead being subjected to a prerecorded message.").

14 30. Defendant's prerecorded call constitutes telemarketing because it encourages the
15 future purchase or investment in property, goods, and/or services, i.e., selling Plaintiff insurance
16 policies from its various insurance industry customers.

17 31. The prerecorded call Plaintiff received originated from a telephone number owned
18 and/or operated by or on behalf of Defendant.

19 32. Plaintiff received the subject call with a prerecorded voice within this judicial
20 district and, therefore, Defendant's violation of the TCPA occurred within this district. Upon
21 information and belief, Defendant caused other prerecorded messages to be sent to individuals
22 residing within this judicial district.
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33. At no point in time did Plaintiff provide Defendant with her express consent to be contacted with a prerecorded call.

34. Plaintiff is the subscriber and sole user of the 8532 Number and is financially responsible for phone service to the 8532 Number.

35. Defendant's prerecorded call was sent to a cellular telephone with a 415 area code, which means Defendant knew, or should have known, that it was making calls into this District. The 415 area code serves San Francisco and its northern suburbs in Marin County (across the Golden Gate), and the northeast corner of San Mateo County.

36. Defendant's unsolicited prerecorded call caused Plaintiff actual harm, including invasion of her privacy, aggravation, annoyance, intrusion on seclusion, trespass, and conversion. Defendant's prerecorded call also inconvenienced Plaintiff and caused disruption to her daily life. *See Patriotic Veterans, Inc. v. Zoeller*, No. 16- 2059, 2017 WL 25482, at *2 (7th Cir. Jan. 3, 2017) ("Every call uses some of the phone owner's time and mental energy, both of which are precious.").

CLASS ALLEGATIONS

PROPOSED CLASS

37. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23, on behalf of herself and all others similarly situated.

38. Plaintiff brings this case on behalf of the Class defined as follows:

All persons within the United States who, within the four years prior to the filing of this Complaint, were sent a call using an artificial or prerecorded voice, from Defendant or anyone on Defendant's behalf, to said person's cellular telephone number, without emergency purpose and without the recipient's prior express written consent.

39. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Class but believes the Class members number in the several thousands, if not more.

NUMEROSITY

40. Upon information and belief, Defendant has placed automated calls to cellular telephone numbers belonging to thousands of consumers throughout the United States without their prior express consent. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

41. The exact number and identities of the members of the Class are unknown at this time and can only be ascertained through discovery. Identification of the Class members is a matter capable of ministerial determination from Defendant's call records.

COMMON QUESTIONS OF LAW AND FACT

42. There are numerous questions of law and fact common to members of the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the members of the Class are:

- a) Whether Defendant made non-emergency calls to Plaintiff's and Class members' cellular telephones using an ATDS;
- b) Whether Defendant can meet its burden of showing that it obtained prior express written consent to make such calls;
- c) Whether Defendant's conduct was knowing and willful;
- d) Whether Defendant is liable for damages, and the amount of such damages; and
- e) Whether Defendant should be enjoined from such conduct in the future.

43. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely transmits prerecorded messages to telephone numbers assigned to cellular telephone services is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

44. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

ADEQUACY

45. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class, and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

PROCEEDING VIA CLASS ACTION IS SUPERIOR AND ADVISABLE

46. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

47. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another may not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

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COUNT I

Violations of the TCPA, 47 U.S.C. § 227(b)

(On Behalf of Plaintiff and the Class)

48. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set forth herein.

49. It is a violation of the TCPA to make “any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system ... to any telephone number assigned to a ... cellular telephone service” 47 U.S.C. § 227(b)(1)(A)(iii).

50. Defendant – or third parties directed by Defendant – used equipment having the capacity to dial numbers without human intervention to make non-emergency telephone calls to the cellular telephones of Plaintiff and the other members of the Class defined below.

51. These calls were made without regard to whether or not Defendant had first obtained express permission from the called party to make such calls. In fact, Defendant did not have prior express consent to call the cell phones of Plaintiff and the other members of the putative Class when its calls were made.

52. Defendant has, therefore, violated § 227(b)(1)(A)(iii) of the TCPA by using an automatic telephone dialing system to make non-emergency telephone calls to the cell phones of Plaintiff and the other members of the putative Class without their prior express written consent.

53. Defendant knew that it did not have prior express consent to make these calls, and knew or should have known that it was using equipment that constituted an automatic telephone dialing system. The violations were therefore willful or knowing.

54. As a result of Defendant’s conduct and pursuant to § 227(b)(3) of the TCPA, Plaintiff and the other members of the putative Class were harmed and are each entitled to a

1 minimum of \$500.00 in damages for each violation. Plaintiff and the members of the Class are
2 also entitled to an injunction against future calls. *Id.*

3 55. Because Defendant knew or should have known that Plaintiff and the other
4 members of the putative Class have not given prior express consent to receive its prerecorded calls
5 to their cellular telephones the Court should treble the amount of statutory damages available to
6 Plaintiff and the other members of the putative Class pursuant to § 227(b)(3) of the TCPA.

7
8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff Michelle Abbaszadeh, on behalf of herself and the other
10 members of the Class, pray for the following relief:

- 11 a) An order certifying this case as a class action on behalf of the Class as defined
12 above, and appointing Plaintiff as the representative of the Class and Plaintiff's
13 counsel as Class Counsel;
- 14 b) An award of actual and statutory damages for Plaintiff and each member of the
15 Class;
- 16 c) As a result of Defendant's negligent violations of 47 U.S.C. §§ 227, *et seq.*,
17 Plaintiff seeks for herself and each member of the Class \$500.00 in statutory
18 damages for each and every violation pursuant to 47 U.S.C. § 277(b)(3)(B);
- 19 d) As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §§ 227,
20 *et seq.*, Plaintiff seeks for herself and each member of the Class treble damages, as
21 provided by statute, up to \$1,500.00 for each and every violation pursuant to 47
22 U.S.C. § 277(b)(3)(B) and § 277(b)(3)(C);
- 23 e) An order declaring that Defendant's actions, as set out above, violate the TCPA;
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- 1 f) A declaratory judgment that Defendant's telephone calling equipment constitutes
2 an automatic telephone dialing system under the TCPA;
- 3 g) An injunction requiring Defendant to cease all unsolicited prerecorded calls
4 activity, and to otherwise protect the interests of the Class;
- 5 h) An injunction prohibiting Defendant from using, or contracting the use of, an
6 automatic telephone dialing system without obtaining, recipient's consent to
7 receive calls made with such equipment;
- 8 i) An award of reasonable attorneys' fees and costs pursuant to, *inter alia*, California
9 Code of Civil Procedure § 1021.5; and
- 10 j) Such further and other relief as the Court deems necessary.

11
12 **JURY DEMAND**

13 Plaintiff hereby demand a trial by jury.

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15 Dated: January 29, 2020

Respectfully submitted,

16
17 By: /s/ William Litvak
18 William Litvak (SBN 90533)
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